

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

JONATHAN WRIGHT,

Plaintiff,

v.

WES DRURY, et al.,

Defendants.

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No. 1:17-cv-120-RLW

MEMORANDUM AND ORDER

This matter is before the Court upon *pro se* plaintiff Jonathan Wright's motion for leave to proceed in forma pauperis. (Docket No. 2). The Court has reviewed the financial information plaintiff submitted in support, and has determined to grant the motion. In addition, as will be explained below, plaintiff will be given the opportunity to submit an amended complaint.

28 U.S.C. § 1915(b)(1)

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner bringing a civil action in forma pauperis is required to pay the full amount of the filing fee. If the prisoner has insufficient funds in his or her prison account to pay the entire fee, the Court must assess and, when funds exist, collect an initial partial filing fee of 20 percent of the greater of (1) the average monthly deposits in the prisoner's account, or (2) the average monthly balance in the prisoner's account for the prior six-month period. After payment of the initial partial filing fee, the prisoner is required to make monthly payments of 20 percent of the preceding month's income credited to the prisoner's account. 28 U.S.C. § 1915(b)(2). The agency having custody of the prisoner will forward these monthly payments to the Clerk of Court each time the amount in the prisoner's account exceeds \$10.00, until the filing fee is fully paid. *Id.*

In support of the instant motion, plaintiff submitted an affidavit and an inmate account statement showing an average monthly balance of \$46.28. The Court will therefore assess an initial partial filing fee of \$9.25, twenty percent of plaintiff's average monthly balance.

Legal Standard on Initial Review

Under 28 U.S.C. § 1915(e)(2), the Court is required to dismiss a complaint filed *in forma pauperis* if it is frivolous, malicious, or fails to state a claim upon which relief can be granted. A pleading that offers “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do,” nor will a complaint suffice if it tenders “naked assertion[s]” devoid of “further factual enhancement.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

When conducting initial review pursuant to § 1915(e)(2), the Court must accept as true the allegations in the complaint, and must give the complaint the benefit of a liberal construction. *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, the tenet that a court must accept the allegations as true does not apply to legal conclusions, *Iqbal*, 556 U.S. at 678, and affording a *pro se* complaint the benefit of a liberal construction does not mean that procedural rules in ordinary civil litigation must be interpreted so as to excuse mistakes by those who proceed without counsel. *See McNeil v. U.S.*, 508 U.S. 106, 113 (1993). Even *pro se* complaints are required to allege facts which, if true, state a claim for relief as a matter of law. *Martin v. Aubuchon*, 623 F.2d 1282, 1286 (8th Cir. 1980); *see also Stone v. Harry*, 364 F.3d 912, 914-15 (8th Cir. 2004) (federal courts are not required to “assume facts that are not alleged, just because an additional factual allegation would have formed a stronger complaint”).

The Complaint

Plaintiff brings this action pursuant to 42 U.S.C. § 1983. Named as defendants are Wes Drury, Justin Wouten, Ryan Dennis, Unknown Pratt, Unknown Scoggins, and Ryan Unknown. Plaintiff sues all defendants in their official and individual capacities.

According to the allegations in the complaint, on April 15, 2017, defendant Ryan Unknown, a corrections officer, slammed plaintiff's right hand while plaintiff was handcuffed, causing injuries serious enough that plaintiff sought medical attention and was taken to the hospital. On June 13, 2017, while he was locked in his cell, plaintiff asked defendant Wouten to explain why he had been placed on lock down. Wouten replied that plaintiff should "shut up and deal with it." (Docket No. 1 at 5). Plaintiff protested, and Wouten returned with a can of mace and told plaintiff to lay on his bed. Plaintiff refused, and Wouten sprayed mace through the "choke hole" and then slammed it shut. (*Id.* at 6). Plaintiff suffered an asthma attack and required a breathing treatment as a result. Regarding the remaining named defendants, it is unclear exactly what plaintiff alleges they did to violate his constitutional rights.

Discussion

Plaintiff attempts to bring unrelated claims against not one but six defendants. Rule 20(a)(2) of the Federal Rules of Civil Procedure governs joinder of defendants, and provides as follows:

Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action.

Therefore, plaintiff cannot join, in a single lawsuit, unrelated claims against different defendants. In other words, plaintiff's claim that Ryan Unknown slammed his hand on April 13,

2017 should not be joined with his claim that Wooten unjustly maced him on June 13, 2017. *See George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007) (“Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.”). “Unrelated claims against different defendants belong in different suits, . . . [in part] to ensure that prisoners pay the required filing fees - for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees.” *Id.*

Rule 18(a) of the Federal Rules of Civil Procedure, which governs joinder of claims, provides:

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal, equitable, or maritime, as the party has against an opposing party.

Therefore, multiple claims against a single defendant are valid.

Because plaintiff is proceeding *pro se*, the Court will give him an opportunity to file an amended complaint. In so doing, plaintiff should select the transaction or occurrence he wishes to pursue, and limit the facts and allegations to the defendant(s) involved in it. Plaintiff should only include claims that arise out of the same transaction or occurrence, or simply put, claims that are related to each other. *See* Fed. R. Civ. P. 20(a)(2). Alternatively, plaintiff may choose a single defendant and set forth as many claims as he has against that defendant. *See* Fed. R. Civ. P. 18(a).

If plaintiff wishes to pursue additional claims against additional defendants, and the claims do not arise from the same transaction or occurrence he has chosen to advance in his amended complaint, he must file each claim as a new civil action on a separate complaint form, and either pay the filing fee or file a motion for leave to proceed *in forma pauperis*.

Plaintiff must prepare the amended complaint using a Court-provided form, and must follow Rules 8 and 10 of the Federal Rules of Civil Procedure. In the “Caption” section of the form complaint, plaintiff should write the name of the defendant(s) he wishes to sue. Plaintiff should also indicate whether he intends to sue each defendant in his or her individual or official capacity.¹ In the “Statement of Claim” section, plaintiff should begin by writing the defendant’s name. In separate, numbered paragraphs under that name, plaintiff should: (1) set forth the facts that support his claim against that defendant; and (2) to the extent he knows it, state what constitutional or federal statutory right(s) that defendant violated. If plaintiff is suing more than one defendant, he shall proceed in this manner with each one, separately writing each individual defendant’s name and, under that name, in numbered paragraphs, the factual allegations specific to that particular defendant and the right(s) that defendant violated. Plaintiff’s failure to make specific and actionable factual allegations against any defendant will result in that defendant’s dismissal from this case.

Plaintiff shall have twenty-one (21) days from the date of this Order to file an amended complaint. Plaintiff is warned that the filing of the amended complaint completely replaces the original. *E.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005).

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed *in forma pauperis* (Docket No. 2) is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff must pay an initial filing fee of \$9.25 within thirty (30) days of the date of this Order. Plaintiff is instructed to make his remittance payable to “Clerk, United States District Court,” and to include upon it: (1) his name; (2) his prison

¹ The failure to sue a defendant in his or her individual capacity may result in the dismissal of that defendant.

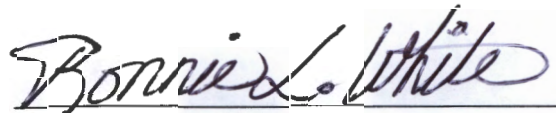
registration number; (3) this case number; and (4) the statement that the remittance is for an original proceeding.

IT IS FURTHER ORDERED that plaintiff shall submit an amended complaint in accordance with the instructions set forth herein within twenty-one (21) days of the date of this Memorandum and Order.

IT IS FURTHER ORDERED that the Clerk of Court shall mail to plaintiff two blank Prisoner Civil Rights Complaint forms, and one prisoner Motion to Proceed In Forma Pauperis form. Plaintiff may request additional forms as needed.

If plaintiff fails to timely comply with this Memorandum and Order, the Court may dismiss this action without prejudice and without further notice.

Dated this 19th day of September, 2017.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE